IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 727 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL DHANABHAI TRIBHOVANDAS NAGARDAS & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AMIT C NANAVATI for Petitioner(s) : 1 - 2.
MR SP HASURKAR A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 17/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. S.P. Hasurkar learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates appearing for

the respective parties the matter is taken up for final disposal today itself.

2. The petitioners are owners of the lands bearing Survey No.943/3 A and B and 943/2 situated at village Harij District Patan. The said lands were required for execution of public purpose and hence acquisition proceedings under the Land Acquisition Act ["the Act" for short] were commenced by issuing Notification under Section 4 (1) of the Act dated 22nd January, 1986 and the declaration made under Section 6 of the Act dated 5th May, 1987. Respondent no. 2 ultimately, declared award under Section 11 of the Act and determined compensation at the rate of Rs.4.50 to 5.50 per sq. meter. It is stated by the petitioners that though they were not satisfied with the amount of compensation determined by the Special Land Acquisition Officer due to poverty, they did not choose to approach the District Court by filing necessary application under Section 18 of the Act requesting the Collector to make Reference to the District Court. However, other land owners who were similarly situated and covered under the same Notification under Section 4 (1) and declaration under Section 6 of the Act approached the District Court, and their Reference cases were partly allowed by the learned 2nd Joint District Judge, Mehsana by judgment and award dated 5th October, 1995. The amount of compensation was raised to Rs.20 per sq. meter. The petitioners learnt about the award made by the learned 2nd Joint District Judge, Mehsana and, therefore, they applied for certified copy of the judgment and award on 11th October, 1995 which was delivered to them on 1st December, 1995. The petitioners thereafter preferred an application under Section 28A of the Act on 18th January, 1996, but the same was rejected by respondent no. 2 by order dated 5th January, 2005, on the ground that the certified copy of the judgment was not produced along with the application under Section 28A of the Act. Thereafter, the petitioners preferred another application under Section 28A (3) of the Act requesting the

Collector to refer the matter to the District Court. The said application was made on 15th January, 2005. However, the said application was also rejected by respondent no. 2 by order dated 3rd February, 2005 on the ground that since the petitioners application under Section 28A(1) of the Act was already rejected, the subsequent application was not maintainable. The petitioners have, therefore, approached this Court to challenge both these orders which are at annexures-`D' and `F' of the compilation of the petition.

3. We have closely perused the averments made in the petition and we have also heard Mr. Amit Nanavaty learned advocate for the petitioners and Mr. S.P. Hasurkar learned A.G.P., for the respondents. The impugned order dated 5th January, 2005, shows that the only ground which has weighed with respondent no. 2 for dismissing the application under Section 28A of the Act is that along with the application, the petitioners had not produced the original or the certified copy of the decision of the District Court. Mr. Nanavaty has submitted that this Court has time and again decided that there is no necessity for the applicant making application under Section 28A (1) of the Act to furnish a copy of the judgment and award made by the District Court on which the applicant places reliance along with the application. In support of his submission, he has cited decision delivered by this very Bench in Special Civil Application No.23808 of 2005 rendered on 16th December, 2005 in the case of **Himmatsinh Arjansinh Thakore & Anr. v. State of Gujarat**. We have perused the said judgment. In view of the said decision, we accept the submission of Mr. Nanavaty. In the said decision we have also placed reliance on another judgment of this Court in the case of **Chitubhai Naranbhai Patel v. Special Land Acquisition Officer reported in 2005 (1) G.L.H., at pg.88**. We have observed as under :-

"3. Mr Amit Nanavaty, learned Advocate appearing for the petitioners has submitted that the reason advanced by respondent no.2 for rejecting the application is against the proposition of law laid down by this court in several judgments. In support of his say, he has cited a decision rendered by the Division Bench of this court in the case of Chitubhai Naranbhai Patel v. Special Land Acquisition Officer, reported in 2005 (1) GLH 88. In the said decision, the Division Bench has observed as under:

> "Production of certified copy of the award along with application as provided under Order 41 R.1 of Civil Procedure Code (i.e. Copy of decree) is not made compulsory either in the Act or in the Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be rejected if the application is filed within three months from the date of the award. However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy is excluded. There may be cases where parties may not be aware of the exact nature of the award of the court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under Section 28A should always be accompanied with the certified copy."

Thus, as per the decision of the Division Bench, production of the certified copy along with application under Section 28A of the Act is not required. Mr Nanavaty has also annexed to the petition judgments rendered by the Division Bench which are on the same line. In view of the same, it is obvious that the impugned order passed by respondent no.2 is against the proposition of law laid down by this court. Hence, this order has to be quashed and set aside. Accordingly, the impugned order is quashed and set aside. The matter is remanded to respondent no.2 for his consideration on merits. It would be open to respondent no.2 to examine all the issues involved in the application including the one of limitation. He shall render the decision within three months from the date of receipt of the writ of this petition."

4. Mr. Hasurkar learned A.G.P., is not in a position to controvert this position. In view of the aforesaid, this petition deserves to be allowed and it is hereby allowed. We now direct the case to be remanded to respondent no. 2 for his decision on merits. It will be open for respondent no. 2 to examine the application from all angles including the angle of limitation and give his decision on merits. Since the earlier application was filed way back on 18th January, 1996, we direct respondent no. 2 to decide the application under Section 28A of the Act filed by the petitioners as expeditiously as possible and in any case not later than three months from the date of receipt of writ of this petition. In view of the aforesaid, there is no need to grant relief in respect of order made below application filed under Section 28A (3) of the Act. Accordingly, the petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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